

The main contention raised before us on behalf of the appellant is that the evidence was insufficient to support the finding that the fatal injury *i.e.* the simultaneous fracture of the nine ribs in the front of the chest was intentionally caused by the appellant. It is argued that the appellant used violence on the deceased with the intention of subduing her to enable him to rape her and not with the intention to cause the fatal injury. We reject that contention. While it is clear that the evidence also establishes that the appellant used violent means with the intention of subduing her in order to commit rape, it is also clear that there was sufficient evidence to support a finding that the appellant also intended to inflict the fatal injury. The trial judges found that the fatal injury was neither accidentally nor otherwise unintentionally caused by the appellant and in the circumstances it is clear that the subjective test involved in the third limb of section 300 has been satisfied. The law is clear. If the injury that the offender intends causing and does cause is sufficient in the ordinary course of nature to cause death the offence is murder as defined in the third limb of section 300.

The only other point raised is that the trial judges, at the trial within a trial, had failed to take into consideration the evidence that five days after the appellant had made a statement before a magistrate on 11th February, he had again appeared before another magistrate but, after preliminary questions had been put to him by the magistrate, had told the magistrate that he did not wish to make a statement. It is argued that his refusal to make another statement was sufficient corroboration of his evidence during the trial within a trial that he had been threatened, assaulted and promises and inducements had been given to him by police officers before he made his statement on 11th February to a magistrate and that the trial judges had failed to take that into consideration in arriving at their finding that his statement of the 11th February was a voluntary statement.

We reject this contention. The trial within a trial lasted several days and all the evidence including the point now taken was before the trial judges and in our opinion there is no sufficient reason for this court to take the view that the trial judges had failed to consider all the evidence before them, including the evidence relating to the unproductive appearance of the appellant before another magistrate, in arriving at their decision to admit in evidence the appellant's statement of the 11th February.

Accordingly, the appeal is dismissed.

Appeal dismissed.

Solicitors: *Yeow & Raman.*

RAJA'S COMMERCIAL COLLEGE v. GIAN SINGH & CO. LTD.

[C.A. (Wee Chong Jin C.J., Kulasekaran and Tan Ah Tah JJ.)
November 12, 1974]

[Singapore — Civil Appeal No. 39 of 1973]

Landlord and Tenant — Tenancy determined by notice to quit — Tenant holding over after notice to quit — Mesne profits — Whether damages awarded should take account of the tax liability of landlord if he had received amount as rent — Whether mesne profits liable to tax — Income Tax Act (Cap. 141), s. 10(1)(f).

Income Tax — Mesne profits liable to tax — Income Tax Act (Cap. 141), s. 10(1)(f).

In this case the learned trial judge had made an order of possession in favour of the respondents, the landlords, and had ordered the appellants, the tenants, to pay mesne profits from the date of the expiry of the notice to quit to the date of delivery of possession. On appeal the appellants contended that the trial judge erred in accepting the computations and calculations of the respondents and that he erred in law in failing to reduce the damages on the ground that the amount of the loss for which the damages represented compensation would have been diminished in the respondent's case by the incidence of income tax.

Held: (1) in this case the trial judge was entitled to act on the respondent's evidence as that was the best evidence available, the appellants neither challenging it nor adducing contrary evidence;

(2) the amount awarded to the respondents as mesne profits would be liable to income tax as "any other profits arising from property" under section 10(1)(f) of the Income Tax Act and therefore there was no reason for the learned trial judge to reduce the damages awarded to the respondent.

Cases referred to:-

(1) *British Transport Commission v. Gourley* [1956] A.C. 185.

(2) *Hall & Co. Ltd. v. Pearlberg* [1956] 1 W.L.R. 244.

COURT OF APPEAL.

A. P. Godwin for the appellants.

J. Grimberg for the respondents.

Wee Chong Jin C.J. (delivering the judgment of the court): The appellants in this appeal were monthly tenants from the year 1957 of the respondents, the owners of a building known as Gian Singh Building situate at 30-1 Raffles Place, Singapore, the commercial heart of Singapore. Their tenancy which comprised a portion of the second floor amounting to an area of 2,917 square feet was determined by a Notice to Quit expiring on the 31st December 1967. They refused to comply with the Notice to Quit and continued to remain in possession. The respondents commenced proceedings in January 1968 which the appellants resisted claiming the protection of the Control of Rent Ordinance. The action did not come to trial, for reasons which are irrelevant for the purposes of the present appeal, until November 1973. The main issue at the trial was whether certain structural alterations and additions to the building which the respondents carried out in 1953 had converted the building into a new building and thus not subject to the provisions of the Control of Rent Ordinance.

The trial judge found in favour of the respondents and made an order for possession. The appellants appealed against the order for possession but abandoned this ground when the appeal came up for hearing. In their Statement of Claim the respondents also claimed double rent from the 1st January 1968 to the date

of delivery of possession but during the trial the parties and the trial judge proceeded on the basis that the claim was for mesne profits, the appellants being trespassers if the premises were not subject to the provisions of the Control of Rent Ordinance.

The respondents called evidence in support of the claim for mesne profits. The managing director of the respondents gave evidence that the monthly rent paid by the appellants before the determination of the tenancy was \$2,281.50 or approximately 75 cents per square foot. He said that in 1968 he had been receiving rent from another tenant, Oriental Emporium, for the first floor of the same premises at the monthly rent of \$1.43 per square foot and produced a copy of the lease to Oriental Emporium. The document produced showed that the lease was for a period of five years from 1st February 1967 at the monthly rent of \$10,000, the lessees paying the service and public utilities charges. The respondents' managing director also said he had let the fourth floor of the same premises to the Bank of America from 1st May 1970 at the monthly rent of \$1.80 per square foot, the lessees paying their own service and public utilities charges. He also produced a copy of the lease to the Bank of America which showed that the lease was for five years at the monthly rent of \$12,500. He computed that the rent he could obtain for the portion of the second floor occupied by the appellants for the period 1st January 1968 to 30th April 1970, based on the rent paid by the Oriental Emporium for the same period, would be \$116,798.86 calculated at the rate of \$1.43 per square foot. He also computed that the rent he could obtain from 1st May 1970 to 30th November 1973, based on the rent paid by the Bank of America for the same period would be \$225,775.80 calculated at the rate of \$1.80 per square foot. He said that he would have been able to let the portion of the premises occupied by the appellants for the two said periods at \$1.43 and \$1.80 per square foot per month respectively.

The respondents' evidence on this part of their claim was not challenged by the appellants and the trial judge accepted it and acting on the computations and calculations he awarded mesne profits accordingly. The appellants now contend that the trial judge erred in failing to take into consideration the peculiar circumstances relating to the leases to the Oriental Emporium and the Bank of America. The argument is that in the case of the Oriental Emporium they were at the material time already lessees of the ground floor of the same premises so that the first floor as a shop would be a valuable adjunct to the business they carried on on the ground floor. A similar argument is advanced in respect of the rent under the 1970 lease to the Bank of America.

We reject this contention. It was not advanced at the trial nor was there any evidence that the rent paid by the Oriental Emporium or by the Bank of America was because each had obtained a valuable adjunct to its business.

The next contention of the appellants is that the trial judge accepted the computation prepared by the respondents without scrutinising the contents of the leases to Oriental Emporium and the Bank of America

A and had he done so he would have come to the conclusion that the respondents' computation was mathematically incorrect. Calculations were produced at the hearing of the appeal which we received and in our opinion, having regard to these calculations, the trial judge did not err in accepting the figures prepared by the respondents. In any event, the trial judge was entitled to act on the respondents' evidence as that was the best evidence available, the appellants neither challenging it nor adducing any contrary evidence.

B The main contention of the appellants is that the trial judge erred in law in failing to reduce the damages on the ground that the amount of the loss for which the damages represented compensation would have been diminished in the respondents' case by the incidence of income tax. The principle enunciated by the House of Lords in *British Transport Commission v. Gourley*⁽¹⁾ is relied on in support of this contention. In *Gourley's* case Earl Jowitt, at page 197, said: —

D "The broad general principle which should govern the assessment of damages in cases such as this is that the tribunal should award the injured party such a sum of money as will put him in the same position as he would have been in if he had not sustained the injuries".

In the same case Lord Goddard (with whose opinion Lord Radcliffe and Lord Somervell of Harrow agreed), at page 206, observed: —

E "The basic principle so far as loss of earnings and out-of-pocket expenses are concerned is that the injured person should be placed in the same financial position, so far as can be done by an award of money, as he would have been had the accident not happened. . . ."

F In *Hall & Co. Ltd. v. Pearlberg*,⁽²⁾ the official referee applied *Gourley's* case in assessing damages for trespass to land. The damages for trespass included a sum (£650) equal to one year's rent which the plaintiffs would have received but for the defendant's trespass. The official referee in his judgment, at page 248, said: —

G "... I see no reason why this sum of £650 should be taxable in the hands of the plaintiffs. Having considered the operation of section 175 of the Income Tax Act 1952, I cannot see how it can be said that the plaintiffs are liable for tax in respect of this award of £650 as damages for trespass. On the other hand, if it had been received as rent it would have been taxable. . . . In the result the plaintiffs will . . . recover £650 tax free instead of £650 less tax and profits tax. I propose to deduct 50 per cent from the damages I award in lieu of rent".

H Similarly, in *Gourley's* case the court proceeded on the basis, as agreed by counsel, that the damages recovered by the plaintiff, a civil engineer, for loss of earnings actual and prospective would not be taxable in his hands and on that basis held that in assessing such damages the judge ought to have taken into account the tax the plaintiff would have had to pay if he had in fact earned by his professional activities the sums lost.

I In the present case, the point now raised was not taken by the appellants in the court below and thus no evidence was led on the respondents' liability to tax and their tax position such as allowable expenditure, accumulated loss and other allowable deductions. In these circumstances, if we are of the opinion that the damages awarded by the court below would not be

taxable in the respondents' hands, we would allow the appeal by remitting the matter to the trial court to assess the damages on the basis that account ought to be taken of the income tax the respondents would have had to pay if in fact it had been received as rent. We would not alter the order as to costs and we would order that the respondents have the costs of this appeal.

However, in our judgment the appellants' main contention must also fail. It is to be observed that in *Gourley's* case the decision proceeded on the agreed assumption that the damages awarded would not be taxable in the plaintiff's hands and in *Hall & Co. Ltd. v. Pearlberg* the official referee expressly held that the £650 awarded as damages in lieu of rent was not liable to tax under the English Income Tax Act 1952.

In the present case counsel for the appellants relied on *Hall & Co. Ltd. v. Pearlberg* as direct authority that damages awarded in lieu of rent would not be liable to income tax. In our opinion this reliance is unsound simply because our income tax law is different from the English income tax laws. However, the question remains whether or not the amount awarded to the respondents as mesne profits would be liable to income tax.

It is not disputed that the trial judge applied the correct principle in arriving at the amount he awarded viz. the rent at which the respondents would have been able to let the premises had the appellants complied with the Notice to Quit. Liability to income tax is imposed by section 10 of the Income Tax Act (Cap. 141). The material provisions of section 10 read:—

"10.—(1) Income tax shall, subject to the provisions of this Act, be payable at the rate or rates specified hereinafter for each year of assessment upon the income of any person accruing in or derived from Singapore or received in Singapore from outside Singapore in respect of—

(f) rents, royalties, premiums and any other profits arising from property;"

In our opinion, it is clear that the damages awarded in the present case undoubtedly fall within the expression "and any other profits arising from property" in section 10(1)(f).

For all these reasons the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw; Drew & Napier.*

RE S. S.

[O.C.J. (Winslow J.) November 14, 1974]
[Singapore — Adoption Petition No. 209 of 1973]

Family Law — Adoption of child — Consent of natural father — Whether consent can be dispensed with — Adoption of Children Act (Cap. 43), s. 3(4).

In this case the petitioners applied for the adoption of a child. The female petitioner had given birth to the girl out of wedlock. Subsequently she was married to the natural father of the girl, but the marriage was an unhappy one and the female petitioner obtained a divorce on the ground of cruelty. Custody of the child was awarded to her. After the decree was made absolute the female petitioner married the male petitioner and they thereupon jointly applied to adopt the child. The natural father withheld his consent and the question which arose was whether the consent of the natural father could be dispensed with. The facts as found by the learned trial judge showed that the natural father had shown himself completely unfit to continue in the role of a father of whom his child could ever be justifiably proud. The girl was at the date of the petition about 8 years and 10 months of age.

Held: in all the circumstances of this case the consent of the natural father should be dispensed with and the petitioners be granted their petition for the adoption of the child.

Cases referred to:—

- (1) *Re W (an infant)* [1971] All E.R. 49.
- (2) *Hitchcock v. W.B.* [1952] 2 All E.R. 123.
- (3) *Re Adoption Nos. 60-09-097014 and 62-09-027718* [1972] 1 W.L.R. 759.

ADOPTION PETITION.

V. Ramakrishnan for the petitioners.

Syed Hassan Almenoar for the respondent.

Patrick Koh Keng Boon (State Counsel) for the Attorney-General and the Assistant Director of Social Welfare.

Winslow J.: This petition for adoption of the child in question came on for hearing before me in Chambers and was heard at the same time as an application on the part of the petitioners to dispense with the father's consent under paragraph (c) of the proviso to subsection (4) of section 3 of the Adoption of Children Act (Cap. 43) which empowers the court to dispense with his consent if the court is satisfied, *inter alia*, that he is a person whose consent ought, in the opinion of the court and in all the circumstances of the case, to be dispensed with.

The undisputed facts are that the female petitioner, who is the natural mother of the girl to be adopted, gave birth to her out of wedlock. The mother married the natural father some 8 months thereafter when he reached the age of 21 years, his own father having previously refused to consent to such marriage. The girl is now about 8 years and 10 months of age.

I find that the marriage from its inception was an unhappy one and after a few years of a most turbulent relationship involving scenes of violence and assault on the mother by the father she left him in October 1970 taking the child with her to stay with her own mother. Eventually she went to live with the male petitioner in early 1971 on discharge from hospital after a nervous breakdown resulting from the distress caused by the removal of the girl from her care by the natural father who shortly afterwards returned the girl to her at her request to allay her distress. He harboured hopes of becoming reconciled with his wife